

No. 12-1789 PO

On February 14, 2013, the Director filed a motion for summary decision. The evidence submitted with the motion for summary decision included an unanswered request for admissions that was served on January 2, 2013. Cooper responded to the motion for summary decision on

March 6, 2013. We denied the motion for summary decision on March 14, 2013 and ordered Cooper to respond to the Director's request for admissions by March 25, 2013. Cooper failed to respond to the request for admissions, and the Director filed his motion for reconsideration of his motion for summary decision on March 27, 2013. We allowed Cooper until April 2, 2013, to respond to the motion for reconsideration, but he did not respond.

Pursuant to 1 CSR 15-3.446(6)(A), we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.¹ In his response to the motion for summary decision, Cooper admitted he pled guilty to the crime of forgery, but denied this crime was committed under the color of law.

Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law."³ That rule applies to all parties, including those acting *pro se*.⁴ Regulation 1 CSR 15-3.420(1) applies that rule to this case.

The following facts, based on this evidence, are undisputed.

Findings of Fact

1. Cooper was a licensed peace officer at all relevant times.
2. Cooper was employed as a peace officer with the Pine Lawn Police Department at all relevant times.

¹1 CSR 15-3.446(6)(B).

²*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³*Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

⁴*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

3. On May 6, 2011, Cooper's grandmother purchased a motor vehicle. Cooper entered a license office, presented himself as an officer of the Pine Lawn Police Department, and provided a forged title application to register the vehicle. The forged title application falsely indicated a lower net price of the motor vehicle in order to lower the sales tax on the motor vehicle.

4. On May 17, 2012, Cooper entered a plea of nolo contendere to the Class C felony of forgery⁵ for the aforementioned conduct.

5. He committed the criminal offense for which he pled guilty.

Conclusions of Law

We have jurisdiction to hear this case.⁶ The Director has the burden of proving that Cooper has committed an act for which the law allows discipline.⁷ The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

Cooper pled guilty to the crime of forgery; therefore, he committed the criminal offense. He is estopped from denying that he committed the offense,⁸ and he made no attempt to do so. There is cause to discipline his license under § 590.080.1(2).

⁵ Section 570.090. Statutory references are to RSMo. Supp. 2012.

⁶Section 590.080.2.

⁷*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁸*Carr. v. Holt*, 134 S.W.3d 647 (Mo. App., E.D. 2004).

Cooper denies that he committed the crime under color of law. He asserts that, “[he] did not use [his] authority at all to gain any special services or to expect the involved parties at the DMV to treat [him] any differently.”⁹ We disagree. Courts have stated that whether the police officer is off duty or out of uniform is not controlling in determining whether the conduct was under color of law. “It is the nature of the act performed, not the clothing of the actor or even the status of being on or off duty, which determines whether the officer has acted under color of law.”¹⁰ The court set forth two circumstances where an off-duty police officer’s actions are “state action” because they were performed under color of law:

(1) when a police officer undertakes purely private action while invoking his authority as a police officer, or as a result of his role as a police officer; and (2) when an off-duty police officer undertakes an official duty.^[11]

Cooper entered the license office and presented himself as an officer of the Pine Lawn Police Department while undertaking the private action of registering his grandmother’s motor vehicle. Furthermore, members of a police department are presumed to abide by the law. Therefore, presenting himself as a peace officer may establish a less thorough screening process by an employee at a license office than would be conducted for a civilian. Presenting himself as a peace officer, while conducting the forgery, is enough to have committed this crime under color of law as described by the United States District Court in *Pickard*.

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹² a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹³

⁹ Cooper’s response to the motion for summary decision.

¹⁰ *Pickard v. City of Girard*, 70 F. Supp. 2d 802, 805 (N.D. Ohio 1999) (citations omitted).

¹¹ *Id.* at 806.

¹² 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹³ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁴ Cooper pled guilty to forgery, which requires “...the purpose to defraud[.]”¹⁵ The requirement of intentional fraud makes this a Category 1 crime that necessarily involves moral turpitude.

There is cause to discipline under § 590.080.1(3).

Summary

Cooper is subject to discipline under § 590.080.1(2) and (3).

SO ORDERED on May 14, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁴*Brhe*, 213 S.W.3d at 725.

¹⁵ Section 570.090.1.